

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

20-CR-6140

vs.

ROBERT FORBES, Jr. also known
as Ra Ra also known as Henny,
Defendant.

Rochester, New York
May 3, 2022
1:10 p.m.

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TESTIMONY OF CHRISTOPHER MARSHERRALL

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MARK W. PEDERSEN
UNITED STATES MAGISTRATE JUDGE

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Marsherall - Direct - Marangola

P R O C E E D I N G S

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(WHEREUPON, the following is an excerpt taken
from proceedings:)

(WHEREUPON, the defendant is present.)

MR. MARANGOLA: Government calls Investigator
Christopher Marsherall.

CHRISTOPHER MARSHERALL, called as a witness, having
been duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. MARANGOLA:

Q Good afternoon, sir.

A Afternoon.

MR. MARANGOLA: May I proceed, your Honor?

MAGISTRATE JUDGE PEDERSEN: You may.

MR. MARANGOLA: Thank you.

Q Would you please tell the Court, are you currently
employed?

A Yes, as a police investigator with the Rochester
Police Department.

Q How long have you been with the Rochester Police
Department?

A Over 15 years.

Q And as an investigator, what is your current

Marsherall - Direct - Marangola

1 assignment?

2 A I'm currently assigned to the Special
3 Investigations Section as an investigator.

4 Q How long have you been with the Special
5 Investigations Section, approximately?

6 A Three years.

7 Q Can you describe for the Court some of your duties
8 as an investigator with the Special Investigations Section?

9 A Some of my duties involve investigating crimes that
10 are currently in progress, as well as has been committed in
11 the past. Mainly we conduct plain clothes, undercover
12 operations where we conduct surveillance on certain
13 individuals.

14 Q All right. Typically what are some of the crimes
15 that you investigate?

16 A Mainly we're assigned felony crimes involving drugs
17 and guns.

18 Q All right. Investigator Marsherall, can I direct
19 your attention to March 26th of 2020.

20 Were you working that night?

21 A Yes, I was.

22 Q And do you recall what was your assignment?

23 A Conducting surveillance in the area of 50 Almira
24 Street.

25 Q And is that A-L-M-I-R-A?

Marsherall - Direct - Marangola

1 A Yes.

2 Q And what were you wearing that evening?

3 A I was in plain clothes in an unmarked vehicle.

4 Q Can you tell the Court at about 8:40 p.m. that
5 night where you were?

6 A Yes. I was parked along the eastern curve and I
7 was facing north.

8 Q On Almira Street?

9 A Yes.

10 Q And that's in the city of Rochester?

11 A Yes.

12 Q Can you describe Almira Street generally?

13 A It is mainly a north-south running street that is
14 two lanes that has two-way traffic. Oakman Street is to the
15 north and Lowell Street is to the south.

16 Q And it's a residential street; is that right?

17 A Yes.

18 Q Can you describe whether there's a lot of houses on
19 it or is it a large street?

20 A It is a relatively short street and there are a few
21 houses on the street.

22 Q Does it T into Oakman on one end, on the north end?

23 A Yes.

24 Q And the south end, it goes to Lowell; is that
25 right?

Marsherall - Direct - Marangola

1 A Yes.

2 Q And that's right just before Upper Falls Boulevard?

3 A Correct.

4 Q Okay. So, essentially, Almira's basically a
5 one-block two-way street?

6 A Yes.

7 Q Do you recall are there streetlights on Almira
8 Street?

9 A Yes.

10 Q And while you were positioned in the area of
11 50 Almira street that evening, what were the conditions like
12 at approximately 8:40 p.m.?

13 A It was a clear night. It was dark outside and the
14 street was illuminated by both streetlights and ambient house
15 lights.

16 Q And you said it was dark outside?

17 A Yes.

18 Q The sun had gone down?

19 A Yes.

20 Q Do you recall approximately what time the sun had
21 set?

22 A Over an hour before, around 7:30 at night.

23 **MR. MARANGOLA:** All right. Judge, at this point, I
24 show to Mr. Pullano -- and I'm going to ask that the Court
25 take judicial notice -- and I'll offer this as Government

Marsherall - Direct - Marangola

1 Exhibit 1 which is a printout from www.almanac.com which sets
2 the sunrise and sunset dates.

3 And it lists the sunset date for March 26th, 2020, as
4 7:31 p.m. I'd ask that the Court take judicial notice of
5 that and receive this under Federal Rule of Evidence 201(c)?

6 **MR. PULLANO:** If I could have a moment. He did show it
7 to me, Judge, but my client wasn't here yet.

8 (WHEREUPON, there was a pause in proceedings.)

9 **MR. PULLANO:** No objection.

10 **MAGISTRATE JUDGE PEDERSEN:** I will receive Exhibit 1 and
11 take judicial notice of the sunset time at 7:31 p.m. on
12 March 26th, 2020.

13 **MR. MARANGOLA:** Thank you, your Honor.

14 **Q** Investigator, why were you positioned in the area
15 of 50 Almira Street on March 26th, 2020, at about 8:40 p.m.?

16 **A** I was asked by other members of the Rochester
17 Police Department to conduct surveillance in that area
18 relative to a home invasion robbery investigation.

19 **Q** And at about 8:40 p.m. did a particular vehicle
20 come to your attention while you were conducting
21 surveillance?

22 **A** Yes.

23 **Q** Can you describe the vehicle and what you observed?

24 **A** Yes. The vehicle was a 2019 Mitsubishi Mirage. It
25 was gray in color. It had a New York license plate JLS 5469.

Marsherall - Direct - Marangola

1 I originally observed the vehicle traveling
2 southbound on Almira Street. The vehicle then started to
3 travel southbound in the northbound lane along the east curb.
4 And as it slowed down, the vehicle turned off its headlights
5 and operated at a slow speed along the curb, again facing
6 southbound in the northbound lane, and rode along the curb
7 until it came to a complete stop in front of 50 Almira
8 Street.

9 Q And it was dark out at the time you made these
10 observations?

11 A Yes.

12 Q In making those observations, did you determine
13 whether or not the vehicle had operated in violation of any
14 sections of the vehicle and traffic law?

15 A Yes.

16 Q And what, if any, sections of the vehicle and
17 traffic law did you observe the Mitsubishi Mirage violate?

18 A Section 1120(a) and Section 375(2)(a)(1).

19 Q All right. Can you describe what each of those
20 sections of the vehicle and traffic law entails and what you
21 observed that led you to believe the vehicle had violated
22 those sections?

23 A Yes. The Section 1120(a), the vehicle is to
24 maintain a position to the right in the roadway. And when I
25 observed the vehicle, it crossed over what would be the

Marsherall - Direct - Marangola

1 center portion of the road and traveled to the left part of
2 the roadway which would be the east curb lane of Almira
3 Street.

4 Then the vehicle did travel for a short period of
5 time without headlights on after previously having headlights
6 on that were operable and after sunset, in violation of
7 Section 375(2)(a)(1).

8 Q And with respect to Section 1120(a), did you
9 observe the vehicle to be overtaking or passing any other
10 vehicle while it was proceeding in the southerly direction?

11 A No, there were no other vehicles in operation on
12 the roadway at the time.

13 Q And did you observe it overtaking or passing any
14 bicyclists or pedestrians or animals or other obstructions on
15 the right half of the roadway?

16 A No.

17 Q Were there any obstructions that existed in the
18 road making it necessary for the vehicle to drive to the left
19 of the center of the roadway?

20 A No.

21 Q And this is a road that is not divided into three
22 lanes, is that correct?

23 A Correct.

24 Q Okay. I'm not sure if you already testified to
25 this -- if you did I apologize -- approximately how long did

Marsherall - Direct - Marangola

1 you observe the vehicle traveling without headlights on?

2 A If I had to estimate, it was approximately under
3 50 feet.

4 Q All right. And what did the vehicle do after it
5 was driving along the eastern side of the road without its
6 headlights on for a distance under 50 feet?

7 A I'm sorry. Can you repeat the question.

8 Q What did you observe the vehicle do after you saw
9 it driving on the eastern side of the road with its
10 headlights off?

11 A It came to a complete stop along the curb, east
12 curb facing south in front of 50 Almira Street.

13 Q So that the driver's side of the vehicle was parked
14 against -- closest to the curb?

15 A Correct.

16 Q What did you observe next?

17 A Two passengers that were inside of the vehicle
18 exited the vehicle and went down the driveway to the south of
19 50 Almira Street. The driver of the vehicle remained in the
20 vehicle.

21 Q When you say they went down the driveway, did they
22 go towards the residence of 50 Almira Street?

23 A Yes, it appeared that way.

24 Q All right. What did you observe next?

25 A A short time later the same two males who exited

Marsherall - Direct - Marangola

1 the vehicle, reentered the vehicle. The driver was still in
2 the vehicle -- the driver that was operating while traveling
3 southbound on Almira Street -- and they remained in the
4 vehicle for a short period of time. Then the vehicle
5 continued to drive southbound pulling away from 50 Almira.

6 Q At any point did you see the driver exit the
7 vehicle?

8 A No.

9 Q When the vehicle pulled away from the eastern curb
10 after the two men had returned to it, did the vehicle have
11 its lights on?

12 A Yes. The lights were turned on.

13 Q After you observed the men get in the vehicle and
14 the vehicle pull away from 50 Almira Street, what did you do?

15 A I radioed my observations to other members of the
16 Rochester Police Department.

17 Q And were you in communication with other members of
18 RPD that night by your radio?

19 A Yes.

20 Q Did you also radio out a description of the
21 vehicle?

22 A Yes.

23 Q In doing so, in sum and substance, can you tell the
24 Court what you communicated to the other officers that night?

25 A That the vehicle committed a violation in the

Marsherall - Direct - Marangola

1 Vehicle and Traffic Law and that there was a probable cause
2 to make a stop on the vehicle.

3 Q And what happened after that?

4 A Other members of the police department --
5 specifically Investigator Leckinger -- continued to monitor
6 the vehicle as it turned on to Upper Falls and ultimately I
7 heard over the radio that the vehicle was stopped.

8 Q All right. Is it your understanding that
9 Investigator Leckinger followed the vehicle as it turned from
10 Almira Street on to Upper Falls Boulevard?

11 A Yes.

12 Q And that that vehicle, that Mitsubishi Mirage, was
13 maintained under surveillance by RPD officers until it was
14 stopped?

15 A Yes.

16 Q And that stop occurred where?

17 A On Upper Falls Boulevard.

18 **MR. MARANGOLA:** All right. I don't believe I have any
19 further questions of Investigator Marsherall.

20 Thank you, sir.

21 **MR. PULLANO:** Can I have a moment before we begin?

22 **MAGISTRATE JUDGE PEDERSEN:** You may.

23 (WHEREUPON, a discussion was held off the record.)

24 **MAGISTRATE JUDGE PEDERSEN:** Mr. Pullano, since we have
25 people connected via Zoom watching proceedings, I simply need

Marsherall - Cross - Pullano

1 to let everybody know that federal law prohibits the
2 recording or sharing of recordings of federal court
3 proceedings.

4 Go ahead.

5 **MR. PULLANO:** Thank you, Judge.

6 **CROSS-EXAMINATION BY MR. PULLANO:**

7 **Q** Good afternoon.

8 **A** Good afternoon.

9 **Q** How long had you been doing the surveillance at
10 Almira relative to what you just testified about what you
11 saw, how long were you before you saw the car?

12 **A** I don't recall the exact time but at least an hour.

13 **Q** Okay. Was this the first time that you had seen
14 this vehicle pull up or come down that street in any way?

15 **A** It's the only time it came to my attention. If it
16 did come by before, I didn't pay attention to it.

17 **Q** Were you only one conducting surveillance on Almira
18 Street?

19 **A** Yes.

20 **Q** Were there any -- no other officers there making
21 any observations about the house at 50 Almira?

22 **A** Directly on Almira Street, to my knowledge, there
23 were no other people making observations directly on Almira
24 Street.

25 **Q** Is there any marked line down the middle of Almira

Marsherall - Cross - Pullano

1 Street or any markings on the street itself, traffic
2 markings?

3 A There is not.

4 Q Okay. And what you saw was a car going -- and when
5 you first saw the car, it's legally proceeding on the
6 right-hand side of the road with the headlights on, is that
7 correct?

8 A Yes, when I first observed it.

9 Q And then you saw it traverse to the other side,
10 pull up to the curb and it turned off the lights before it
11 came to a full stop?

12 A Yes.

13 Q How many seconds before it came to a full stop?

14 A Less than three.

15 Q You didn't issue any traffic citations?

16 A I did not.

17 Q Did you make any note -- were you able to recognize
18 any drivers in the vehicle or anybody in the vehicle?

19 A I did not.

20 Q Were you at all looking to find my client that
21 evening, Robert Forbes?

22 A I was not part of the investigation -- only to
23 conduct surveillance -- so I was not specifically looking for
24 anybody.

25 Q Had you been advised that he was a person of

Marsherrall - Cross - Pullano

1 interest or a suspect or anything like that?

2 A Yes.

3 Q When you saw any individual in the vehicle, were
4 you able to recognize them?

5 A I was not.

6 Q In your radio transmissions, did you mention the
7 name of anyone or simply the vehicle?

8 A Just the vehicle and my observations of three
9 individuals being in the vehicle.

10 Q So, where were the three individuals in the
11 vehicle?

12 A There was a driver and two people who got in and
13 out of the passenger side of the vehicle.

14 Q And both of them get out -- was it, is it two-door,
15 four-door?

16 A I don't recall. And the angle I was at, I was only
17 able to see they went in and out of the passenger side of the
18 vehicle.

19 Q So you saw a total of three people get out?

20 A Two people get out and the driver remained in.

21 Q And the two people that got out, did you witness
22 them do anything that would suggest any criminality when they
23 got out of the car?

24 A No.

25 Q Did you witness them making any furtive glances or

Marsherrall - Cross - Pullano

1 looks or look like they were casing the place or anything
2 like that?

3 A No.

4 Q How long were they out of the vehicle?

5 A Under ten minutes.

6 Q And during that time did you radio anything about
7 the individuals, the vehicle, anything like that?

8 A I may have just alerted that the vehicle was in
9 front of the location.

10 Q Did you at that point alert as to the vehicle
11 having anything about the vehicle either having lights off or
12 having crossed over the street?

13 A I don't remember at what point I notified them over
14 the radio.

15 Q So the two males that got out, you saw them
16 actually go into the premises at 50 Almira?

17 A No, I wasn't able to tell if they made entry in
18 from where I was positioned.

19 Q You filed a police report in this matter, is that
20 correct?

21 A Yes.

22 Q Investigative action report?

23 A Yes.

24 Q And did you make the following statement: "The
25 same two males disappeared and appeared to be inside of

Marsherall - Cross - Pullano

1 50 Almira Street"?

2 A Yes.

3 Q And a few minutes later, those two individuals
4 reappeared, stood in the driveway and then got into the
5 vehicle?

6 A Yes.

7 Q And, again, nothing criminal in what you witnessed,
8 no -- no violations of any laws in what you saw those two
9 individuals do; is that correct?

10 A Correct.

11 Q You watched the vehicle drive away and what did you
12 see the vehicle do from your vantage point?

13 A In regards to driving away?

14 Q Yeah.

15 A It drove southbound on Almira Street towards Lowell
16 and Upper Falls Boulevard.

17 Q Okay. And did you -- which way, where did it go
18 from there, do you know?

19 A I, I don't recall. I radioed and Investigator
20 Leckenger said that he observed the same vehicle and took
21 over surveillance of it.

22 Q You weren't present when the vehicle was stopped;
23 is that correct?

24 A Correct.

25 Q Once it drove out of your eyesight, you didn't see

Marshall - Cross - Pullano

1 that vehicle again on the road; is that correct?

2 A After I was relieved from surveillance, I've seen
3 it on Upper Falls Boulevard but this was a time period after.

4 Q Right. And that was after a stop, is that correct?

5 A Correct.

6 Q So, my question -- that's why I said on the road --
7 but from the time it left, you didn't witness the vehicle's
8 operation between the time it left you and the time it was
9 stopped?

10 A That would be correct.

11 Q And you're not able to testify as to what any other
12 officer would have seen or not seen as they followed any
13 vehicle; is that correct?

14 A Correct.

15 **MR. PULLANO:** If I can just one moment.

16 **MAGISTRATE JUDGE PEDERSEN:** Certainly.

17 (WHEREUPON, a discussion was held off the record.)

18 Q Where were -- were you outside of the vehicle or
19 inside the vehicle when you were watching this vehicle?

20 A Inside of the vehicle.

21 Q And where was that vehicle parked?

22 A On the eastern curb south of 50 Almira Street.

23 Q About how far?

24 A About one house away. If I had to estimate,
25 150 feet.

Marsherall - Cross - Pullano

1 Q All right. The next 50, there's a vacant lot; is
2 that correct?

3 A Yes.

4 Q Are you sure the vehicle went in front of 50 or did
5 it stop closer to the vacant lot, do you recall?

6 A When, when you asked a vacant lot, the vacant lot
7 that is north of 50 Almira? Or south?

8 Q Well, I'm actually asking you. Are there -- there
9 are lots on both sides, then?

10 A There's a open lot that I remember directly north
11 of 50 Almira.

12 Q Okay. And it's your testimony that he was
13 precisely in front of 50 Almira?

14 A Just --

15 Q The vehicle was in front of 50 Almira?

16 A Just north of the driveway. The driveway that goes
17 to 50 Almira.

18 Q Is the driveway on the north or south of 50 Almira?

19 A It is to the south.

20 Q So, north of the driveway would be actually parked
21 somewhat next door to where 50 Almira is?

22 A It would be either in front of or slightly next
23 door.

24 Q Okay.

25 **MR. PULLANO:** Those are all my questions. Thank you.

Marsherall - Examination by Judge Pedersen

1 **MAGISTRATE JUDGE PEDERSEN:** Any redirect?

2 **MR. MARANGOLA:** No, thank you, your Honor.

3 **MAGISTRATE JUDGE PEDERSEN:** Investigator, you said the
4 car you observed, the Mitsubishi traveled about 50 feet in
5 the wrong lane with the lights off?

6 **THE WITNESS:** It traveled in the wrong lane longer
7 than 50 feet but I would estimate only 50 feet with its
8 lights off.

9 **MAGISTRATE JUDGE PEDERSEN:** Traveled more than 50 feet
10 in the wrong lane?

11 **THE WITNESS:** Yes.

12 **MAGISTRATE JUDGE PEDERSEN:** You were 50 feet south of 50
13 Almira Street?

14 **THE WITNESS:** Yes.

15 **MAGISTRATE JUDGE PEDERSEN:** So it passed right close to
16 your door, then, to cut in to get in front of you?

17 **THE WITNESS:** It never passed me while committing the
18 violations. It came from the north towards me.

19 **MAGISTRATE JUDGE PEDERSEN:** Oh, I see.

20 **THE WITNESS:** And I was south facing north.

21 **MAGISTRATE JUDGE PEDERSEN:** Okay. Got it. And when it
22 drove off, did you observe it turn?

23 **THE WITNESS:** Turn after it drove off of Almira Street?

24 **MAGISTRATE JUDGE PEDERSEN:** Mm-hmm.

25 **THE WITNESS:** I don't remember if I saw it turn or after

Marsherall - Cross - Pullano

1 it passed me, I radioed to other officers who said they had
2 eyes on it and I remained my focus on 50 Almira Street.

3 **MAGISTRATE JUDGE PEDERSEN:** So when it passed you, it
4 would have gone into your rear view at that moment?

5 **THE WITNESS:** Yes.

6 **MAGISTRATE JUDGE PEDERSEN:** When it pulled away from the
7 curb to leave 50 Almira, did it signal leaving the curb?

8 **THE WITNESS:** I did not make note of it. I don't
9 remember if it did or did not.

10 **MAGISTRATE JUDGE PEDERSEN:** Any questions after my
11 questioning?

12 **MR. MARANGOLA:** No, thank you, Judge.

13 **MAGISTRATE JUDGE PEDERSEN:** Mr. Pullano?

14 **MR. PULLANO:** Yes, thank you. Just a couple.

15 **FURTHER CROSS-EXAMINATION BY MR. PULLANO:**

16 **Q** In terms of how many seconds did it take for the
17 vehicle to get across the street?

18 **A** I'm, I'm not sure I understand your question.

19 **Q** From the time that the vehicle was in the, the
20 right lane until it got over into the left lane, how long did
21 that take?

22 **A** Less than two seconds.

23 **Q** And then another few seconds going forward in that
24 other lane?

25 **A** Yes.

Marsherall - Cross - Pullano

1 Q And where the vehicle was after it crossed over,
2 those would be legitimate parking spaces; is that correct?

3 A I'm not sure what the parking rules are on that
4 street but there were no other vehicles it was running into.

5 Q Well, you were parked in the same lane where the
6 vehicle went to; is that correct?

7 A Yes.

8 Q So it was pretty much in the same lane where you
9 were parked, just facing the opposite direction?

10 A Correct.

11 **MR. PULLANO:** Thank you. That's all I have.

12 **MR. MARANGOLA:** Nothing further, Judge. Thank you.

13 **MAGISTRATE JUDGE PEDERSEN:** Thank you, Investigator.
14 You're excused.

15 (WHEREUPON, witness excused.)
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Marsherall - Cross - Pullano

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CERTIFICATE OF REPORTER

In accordance with 28, U.S.C., 753(b), I
certify that these original notes are a true and correct
record of proceedings in the United States District Court
of the Western District of New York before the
Honorable Mark W. Pedersen on May 3, 2022.

S/ Diane S. Martens

Diane S. Martens, FCRR, RPR
Official Court Reporter